

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4275 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ATIC INDUSTRIES LTD.

Versus

COLLECTOR

Appearance:

MR RP BHATT for Petitioner

MR MUKESH PATEL, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/02/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner-industry has challenged the show cause notice dated 10.6.1988 (Annexure "E") issued by the Collector, Electricity Duty, Ahmedabad calling upon the petitioner-industry to show cause why the exemption from payment of electricity duty granted by the Collector, Electricity Duty, Ahmedabad on 22.7.1981 should not be revoked.

2. Under the Bombay Electricity Duty (Gujarat) Rules, 1968, the petitioner-industry had made an application for obtaining exemption from payment of electricity duty on 28.7.1979 in respect of (i) 1 x 2000 KW back pressure Turbo Generating Set and (ii) 2 x 500 KVA Diesel generating sets. Since the Collector sought certain clarifications and details, the petitioner supplied the same as per letter dated 22.8.1979 (Annexure "A" to the petition). In view of the controversy subsequently sought to be raised by the respondent, the contents of the said letter are set out in its entirety:-

"The Collector of Electricity Duty,
Navdeep Building, Ashram Road,
Ahmedabad 380 014.

Dear Sir,

Application in Form "E" for obtaining
exemption from the payment of electricity
duty on :

- a) 1 x 2000 KW Back Pressure Turbo
Generating Set
- b) 2 x 500 KVA Diesel Generating
Sets.

We thank you for your above letter dated
7.8.1979, and wish to clarify your points raised
in the said letter as follows -

1. When ATIC was set up in 1956, we could
not obtain electrical power from the
State Electricity Board as it was not
available then in the region.
2. M/s Atul Products Limited had set up a
power house and ATIC being an associate
company, obtained its power requirements
from M/s. ATUL Products Ltd. from 1956
to 1966 as there was no other
alternative.
3. Since October 1966, ATIC has been drawing
its total requirement of electric power
from the GEB via the ATUL installation.
This arrangement has been approved by the
Government.

4. In 1964, a 200 KVA Diesel General Set was installed. Since the actual units generated from this set was very low and as the legal position was not clear to us at that time, we did not apply for exemption from electricity duty at that time. Hence we have been paying electricity duty though it was our first generating set.
5. In 1977, as reported in our letter, the
- (a) 2000 KW Back Pressure Turbo Set and
 - (b) 2 x 500 KVA Diesel Generating Sets
- were set up.

We trust we have been able to clarify the points raised by you but should you require any further explanation as also reported earlier in our letter, we would be too happy to come to your office.

Anticipating a favourable response,

Yours faithfully,
for ATIC INDUSTRIES LTD.,

Sd/-
(R.S. Deshpande)
Chief Engineer"

Thereafter by letter dated 6.9.1979 (Annexure "B" - Pg. 20), the Collector again sought further details particularly regarding the capacity of each generating set to generate electricity in units per annum and also number of units generated by each generating set per annum. The petitioner supplied the said information as per their letter dated 17.9.1979 (Annexure "B" - Pg. 21). The Collector again sought further information by his letter dated 2.6.1980 (Annexure "C" - Pg. 23) to which reply was given by the petitioner on 24.6.1980 (Annexure "C" - Pg. 24). Ultimately by certificate dated 22.7.1981 (Annexure "D"), the Collector of Electricity Duty, Ahmedabad certified that the petitioner was entitled to exemption from payment of electricity duty under Section 3(2)(vii) of the Bombay Electricity Duty Act, 1958 with effect from 30.7.1979 to 31.8.1987. The exemption was subject to compliance of certain requirements. It is nobody's case that the petitioner unit had committed breach of any of those requirements and, therefore, no further reference is required to be made to the said requirements. Seven years thereafter,

on 10.6.1988, the Assessing Officer in the office of the Collector of Electricity Duty, Ahmedabad sent the impugned show cause notice at Annexure "E" to the petition calling upon the petitioner to show cause why the exemption granted on 22.7.1981 should not be revoked and that the refund granted to the petitioner for the period from 30.7.1979 to 31.8.1987 should not be recovered from the petitioner. It is the aforesaid notice which is under challenge in this petition.

3. When the petition came up for preliminary hearing on 5.8.1988, this Court speaking through Hon'ble Mr Justice G.T. Nanavati, (as His Lordship then was) admitted the petition and granted ad-interim relief staying operation of the show cause notice. After hearing the parties, the ad-interim relief came to be confirmed on 17.8.1988. No affidavit in reply has been filed to the petition.

4. At the hearing of this petition today, Mr RP Bhatt, learned Senior Advocate with Mr MR Bhatt for the petitioner have made following submissions :-

- (i) Once the certificate was granted in favour of the petitioner unit on 22.7.1981, there was no power of review conferred on the Collector or any other officer under the provisions of the Bombay Electricity Duty Act, 1958 as the impugned show cause notice is without jurisdiction.
- (ii) The impugned show cause notice came to be issued after a period of seven years and, therefore, the same was issued after unreasonable delay and, therefore, also the notice deserves to be quashed and set aside.
- (iii) On merits also, the show cause notice proceeds on an erroneous assumption of law that the installation of the generating sets in question did not amount to setting up a new industry as contemplated by the Act.

5. On the other hand, Mr Mukesh Patel, learned AGP for the respondent has opposed the petition and has made the following submissions :-

- (i) The petition challenges only the show cause notice. No final decision has been taken by the authorities and, therefore, the petition may not be entertained.

(ii) Since the petitioner had already installed the first generating set in the year 1964, installation of any further sets in 1977 or 1979 would not confer any right upon the petitioner to get exemption from electricity duty.

(iii) Since the exemption was wrongly granted in favour of the petitioner, the authorities had power to recall the exemption, irrespective of the length of period during which the exemption operated.

6. Having heard the learned counsel for the parties, this Court is of the view that it is not necessary to express any opinion on the first contention raised by the learned counsel for the petitioner as the petition can be disposed of in view of the finding which this Court proposes to give on the second contention. In the course of deciding the said contention, a reference is required to be made to the third contention of the petitioner though no final view is required to be taken on the third contention either.

7. There is considerable substance in the contention urged by Mr Bhatt for the petitioner that the show cause notice was issued after unreasonable delay of seven years. The exemption was granted on 22.7.1981 and the same is sought to be revoked as per the impugned show cause notice dated 10.6.1988. As per the settled legal position, when the statute does not prescribe any period for exercising statutory powers or duties, such power must be exercised within reasonable time. What is reasonable would obviously depend on the nature of the power, the facts and circumstances of each particular case and the ground on which such power is sought to be exercised. As per the settled legal position, there is also an exception to the hard and fast rule as if a party had obtained any benefit by playing fraud or by suppressing the material facts, then the mere delay cannot come in the way of the authorities exercising their powers under a statute. In the instant case, it is not the case of the authorities issuing the show cause notice that the petitioner had suppressed any material fact or that the petitioner had played any fraud. On the contrary, a perusal of the letter dated 22.8.1979 (Annexure "B" - Pg. 19) clearly shows that the petitioner had clearly stated that in 1964 a 200 KVA Diesel Generator set was installed. In view of the aforesaid disclosure which was made as far back in August, 1979 and in view of various particulars furnished by the petitioner as are evident from Annexures "A" to "C" to this petition, it cannot be said that the present

case falls within the aforesaid exception under which statutory powers can be exercised even if there is unreasonable delay in exercising such power. The impugned show cause notice also does not disclose any fact or circumstance which could explain the said unreasonable delay of seven years.

8. However, Mr Mukesh Patel, learned AGP for the respondent would submit that if the exemption was granted contrary to the statutory provisions, the aforesaid principle would not apply as there cannot be estoppel against a statute. This contention is examined only for the limited point of view to find out whether the exemption granted in favour of the petitioner was without any authority or whether two views were possible. Examining the matter from this limited angle, the Court finds that the third contention urged on behalf of the petitioner that what was installed by the petitioner in the year 1979 and for which the exemption was granted in the year 1979 was not a mere additional capacity to new unit. This is apparent from the capacity of the generating sets, a reference to which is made in the letter dated 17.9.1979 (Annexure "B" Pg. 22) as well as in the letter dated 24.6.1980. The following capacity and the number of units annually generated by the respective sets, as extracted from the letter dated 24.6.1980 (Annexure "C"), would clearly go to show that what was done in 1977-78 prima was not a mere extension:-

"We give herebelow the maximum units each set can generate if allowed to run continuously at full capacity and 0.8 Power Factor throughout the year taking 300 working days which itself is a hypothetical case as generating sets never run at full capacity for twenty-four hours in a day.

- 1) 200 KVA set - 1152000 KWH/Year
- 2) 2 x 500 KVA set - 5760000 KWH/Year each
- 3) 1 x 2000 KW set - 14400000 KWH/Year.

In practice, however, generation per year, considering 60% Load Factor and 3000 working days would workout as follows if all the sets were to run continuously during the year.

- 1) 200 KVA Set - 691200 KWH/Year
- 2) 2 x 500 KVA set - 3456000 KWH/Year and
- 3) 1 x 2000 KW set - 8640000 KWH/Year."

9. The Court hastens to add that the aforesaid issue has been examined only from the limited angle whether the grant of exemption in favour of the unit in 1981 for the period from 1979 and 1987 was without any authority or jurisdiction. On the basis of the material on record, it is not possible to give any opinion against the petitioner or in favour of the respondent. At the highest, two views were possible and the Collector did not take the view in favour of the petitioner. Mere change of opinion by an officer of the department cannot justify initiation of proceedings for revocation of the certificate after a period of seven years when admittedly no allegation is made against the petitioner that there was any violation of any of the terms and conditions of the exemption or the requirements prescribed therein.

10. In view of the above discussion, the petition is allowed. The impugned notice dated 10.6.1988 issued by the Collector of Electricity Duty, Ahmedabad is quashed and set aside and the respondents are restrained from proceeding on the basis of the said impugned notice.

Rule is made absolute to the aforesaid extent with no order as to costs.

February 18, 2000 (M.S. Shah, J.)
sundar/-